



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0240]

RIN 1625-AA00

Safety Zone; Kemah Boardwalk Summer Season Fireworks, Galveston Bay, Kemah, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the specified waters in Galveston Bay in the vicinity of Kemah, Texas within a 1000' radius around a fireworks barge. The safety zone is necessary to aid in the safety of mariners viewing the Kemah Boardwalk Summer Season Fireworks. During periods of enforcement, entry into the zone will not be permitted except as specifically authorized by the Captain of the Port Houston-Galveston or a designated representative.

DATES: This rule is effective from 8:30 p.m. on June 1, 2012 until 1 a.m. on January 1, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0240]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the

"SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail call or e-mail LT Margaret Brown, Sector Houston-Galveston Waterways Management Branch, U.S. Coast Guard; telephone (713)678-9001, e-mail Margaret.A.Brown@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C.

553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objective since immediate action is needed to protect person's and vessels against the hazards associated with fireworks displays on navigable waters. Such hazards include premature detonations, dangerous detonations, dangerous projectiles and falling or burning debris.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For firework displays occurring without a full 30 days notice, it would be impracticable to interfere with the fireworks displays or delay the immediate action needed to protect mariners viewing the fireworks displays. This rulemaking provides 30 days notice for firework displays occurring after [INSERT 30 DAYS AFTER DATE OF PUBLICATION].

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1266, 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

The Kemah Boardwalk Summer Season Fireworks will feature fireworks being launched from a barge. It has been determined that a safety zone is necessary to keep recreational vessels clear of any potential hazards associated with the launching of fireworks.

This temporary safety zone provides protection for persons and property, including spectators, persons working the displays, and others that may be in the area during enforcement periods of this temporary safety zone, from the hazards associated with fireworks displays on or over the waterway.

C. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone in Galveston Bay in the vicinity of Kemah, Texas within a 1000' radius around a fireworks barge located at approximate Latitude 29°32'57"N, Longitude 095°00'31"W. Entry into the zone will not be permitted except as specifically authorized by the Captain of the Port Houston-Galveston or a designated representative. They may be contacted at "Sector Houston-Galveston" on VHF-FM Channels 16, or by phone at (713) 671-5113. Requests to enter into and/or pass through the safety zone will be reviewed on a case-by-case basis.

The temporary safety zone will be enforced during the following dates and times: from 8:30 p.m. until 11:30 p.m. on June 1, 8, 15, 22, and 29, 2012; July 4, 6, 13, 20, and 27, 2012; November 3, 2012; and from 9 p.m. on December 31, 2012 until 1

a.m. on January 1, 2013. Notifications of changes in enforcement periods will be made through broadcast notice to mariners.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This regulation is not a significant regulatory action because enforcements of the safety zone will only be in effect for a brief period of time. Notifications to the marine community will be made through broadcast notice to mariners and electronic mail. The safety zone will only affect recreational vessels and deviation from the restrictions may be requested from the COTP or designated representative and will be considered on a case-by-case basis. The impacts on routine navigation are expected to be minimal.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of recreational vessels intending to transit or anchor in a portion of the Clear Creek/ Kemah Channel from 8:30 p.m. until 11:30 p.m. on June 1, 8, 15, 22, and 29, 2012; July 4, 6, 13, 20, and 27, 2012; November 3, 2012; and from 9 p.m. on December 31, 2012 until 1 a.m. on January 1, 2013.

The impact would not be significant to small entities as each safety zone will only affect recreational vessels transiting the Clear Creek/Kemah Channel for a short period of time. Before activation of the zone, broadcast notices to mariners will be issued to users of the channel.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or

options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-

4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone for the protection of human life. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

E. List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (Water), Reporting and Recordkeeping Requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

Part 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. A new temporary § 165.T08-0240 is added to read as follows:

§ 165.T08-0240 Safety Zone; Kemah Boardwalk Summer Season
Fireworks, Galveston Bay, Kemah, TX

(a) Location. The following area is a safety zone:
Galveston Bay within a 1000' radius around a fireworks barge
located at approximate Latitude 29°32'57"N, Longitude
095°00'31"W.

(b) Enforcement dates. The temporary safety zone will be
enforced during the following dates and times: from 8:30 p.m.
until 11:30 p.m. on June 1, 8, 15, 22, and 29, 2012; July 4, 6,
13, 20, and 27, 2012; November 3, 2012; and from 9 p.m. on
December 31, 2012 until 1 a.m. on January 1, 2013. Notifications
of changes in enforcement periods will be made through broadcast
notice to mariners.

(c) Regulations. (1) In accordance with the general
regulations in § 165.23 of this part, entry into this zone is
prohibited unless authorized by the Captain of the Port Houston-
Galveston.

(2) Persons or vessels requiring entry into or passage
through the zone must request permission from the Captain of the
Port Houston-Galveston, or a designated representative. They may
be contacted at "Sector Houston-Galveston" on VHF-FM Channels 16,
or by phone at (713) 671-5113. Requests to enter into and/or pass
through the safety zone will be reviewed on a case-by-case basis.
All persons and vessels shall comply with the instructions of the
Captain of the Port Houston-Galveston and designated on-scene

U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) Informational Broadcasts. Notifications of changes in enforcement periods and changes to the safety zone will be made through broadcast notice to mariners.

Dated: May 9, 2012

JAMES H. WHITEHEAD
Captain, U.S. Coast Guard
Captain of the Port Houston-Galveston

[FR Doc. 2012-13160 Filed 05/30/2012 at 8:45 am; Publication
Date: 05/31/2012]